

§ 404.721

death by a United States Consul or other employee of the State Department; or a copy of the public record of death in the foreign country.

(c) *Other evidence of death.* If you cannot obtain the preferred evidence of a person's death, you will be asked to explain why and to give us other convincing evidence such as: the signed statements of two or more people with personal knowledge of the death, giving the place, date, and cause of death.

§ 404.721 Evidence to presume a person is dead.

If you cannot prove the person is dead but evidence of death is needed, we will presume he or she died at a certain time if you give us the following evidence:

(a) A certified copy of, or extract from, an official report or finding by an agency or department of the United States that a missing person is *presumed to be dead* as set out in Federal law (5 U.S.C. 5565). Unless we have other evidence showing an actual date of death, we will use the date he or she was reported missing as the date of death.

(b) Signed statements by those in a position to know and other records which show that the person has been absent from his or her residence and has not been heard from for at least 7 years. If the presumption of death is not rebutted pursuant to § 404.722, we will use as the person's date of death either the date he or she left home, the date ending the 7 year period, or some other date depending upon what the evidence shows is the most likely date of death.

(c) If you are applying for benefits as the insured person's grandchild or stepgrandchild but the evidence does not identify a parent, we will presume the parent died in the first month in which the insured person became entitled to benefits.

[43 FR 24795, June 7, 1978, as amended at 60 FR 19164, Apr. 17, 1995]

§ 404.722 Rebuttal of a presumption of death.

A presumption of death made based on § 404.721(b) can be rebutted by evidence that establishes that the person is still alive or explains the individ-

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ual's absence in a manner consistent with continued life rather than death.

Example 1: Evidence in a claim for surviving child's benefits showed that the worker had wages posted to his earnings record in the year following the disappearance. It was established that the wages belonged to the worker and were for work done after his "disappearance." In this situation, the presumption of death is rebutted by evidence (wages belonging to the worker) that the person is still alive after the disappearance.

Example 2: Evidence shows that the worker left the family home shortly after a woman, whom he had been seeing, also disappeared, and that the worker phoned his wife several days after the disappearance to state he intended to begin a new life in California. In this situation the presumption of death is rebutted because the evidence explains the worker's absence in a manner consistent with continued life.

[60 FR 19165, Apr. 17, 1995]

§ 404.723 When evidence of marriage is required.

If you apply for benefits as the insured person's husband or wife, widow or widower, divorced wife or divorced husband, we will ask for evidence of the marriage and where and when it took place. We may also ask for this evidence if you apply for child's benefits or for the lump-sum death payment as the widow or widower. If you are a widow, widower, or divorced wife who remarried after your marriage to the insured person ended, we may also ask for evidence of the remarriage. You may be asked for evidence of someone else's marriage if this is necessary to prove your marriage to the insured person was valid. In deciding whether the marriage to the insured person is valid or not, we will follow the law of the State where the insured person had his or her permanent home when you applied or, if earlier, when he or she died—see § 404.770. What evidence we will ask for depends upon whether the insured person's marriage was a ceremonial marriage, a common-law marriage, or a marriage we will deem to be valid.

[43 FR 24795, June 7, 1978, as amended at 44 FR 34493, June 15, 1979]